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Pascal Crepel

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9486

22852

7590

05/11/2010

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EXAMINER

BADR, HAMID R

ART UNIT

PAPER NUMBER

1781

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Advisory Action***

Applicants' amendment after final rejection filed 4/21/2010 is acknowledged. This amendment is entered for appeal purposes.

No claims are allowed.

***Response to Arguments***

The presented arguments have been considered. These arguments are not deemed persuasive for the following reasons.

1. Applicants argue that the Office has not established a prima facie case of obviousness because the Office has not met the burden of providing reasons for modifying R1 in order to obtain the bimodal structure recited in claim 1.
  - a. The product as disclosed by R1 is an aerosol dispensable yogurt product which incorporates cream into yogurt basically at the same proportions (by weight) as presently claimed. Since it is an aerosol dispensable product, it should be a uniform mixture to be able to be dispensed. The uniformity of the product requires the yogurt and the incorporated cream to be in form of an emulsion. Being an emulsion the emulsified fat globules should have a certain range of particle size for the emulsion to be stable which is only achieved through the use of homogenized cream. Due to differences in the density of fat and water protein mixture, if the fat (in the cream) is not homogenized, separation of phases would be inevitable which ultimately causes the instability of an aerosol dispensable product disclosed by R1. The degree to which the cream should be homogenized is determined by the properties of the finished product

Art Unit: 1781

desired. Once the incorporation of cream is disclosed by the art, any manipulation and optimization of the cream homogenization for various purposes in the finished product is well within the skill of the art.

2. Applicants also argue that the cream to yogurt ratios of R2 are different from the presently claimed proportions and that the homogenization process is missing in R2.

a. While the cream and yogurt proportions as disclosed by R2 are slightly different from cream and yogurt proportions as presently claimed, since varying the cream and yogurt proportions would result in different overruns (as disclosed by R2), different whipping properties, different flavors, and different caloric values, one would be motivated to changes those proportions for any of the mentioned reasons.

Consequently, the cream and yogurt proportions as presently claimed can be manipulated by those of skill in the art.

The reasons for using a homogenized cream in a stable aerosol are mentioned above in

1a.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1781

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R Badr  
Examiner  
Art Unit 1781

/Keith D. Hendricks/

Supervisory Patent Examiner, Art Unit 1781